

## REMARKS

**Claims in the Application.** Claims 110, 114, 124, 135, 137, 144, 152, 167, 172 and 176 have been amended herein. Claims 106-110, 112, 114-116, 119, 121-131, 135-140, 142, 144-145, 150-154 and 160-180 are active in this application. Reconsideration is respectfully requested.

**Examiner's Rejection Over *Rickards*.** The Examiner has maintained the following rejections:

- (i.) rejection of Claims 106-110, 112, 114-116, 119, 121-131, 135-140, 142, 144, 145, 150-154, 160, and 169-180 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over U.S. Patent Publication No. 6,059,034 (“*Rickards*”); and
- (ii.) rejection of Claims 161-168 under 35 U.S.C. § 103(a) as being unpatentable over *Rickards*).

These grounds of rejection are respectfully traversed.

In the Advisory Action, the Examiner states that an agglomerate of *Rickards* is “indeed a particle/particulate.” Applicants respectfully disagree. Each of the claims of Applicants recites a “porous particulate material [which] has inherent or induced permeability” On p. 10, ll. 17-23, Applicants define “inherent or induced permeability” on p. 10, ll. 17-20 as:

individual pore spaces *within the particle* ... interconnected so that fluids are capable of at least partially moving through the porous matrix, such as penetrating the porous matrix of the particle....

That Applicants consider the claimed terminology to comprise a single particle versus an agglomerate is evident by the language throughout the specification of a “pack” of the claimed particulates. *See*, for instance, the bridging paragraph of pages 4 and 5 wherein a “cluster” or agglomerate is referenced as a “multitude of coated particulates bonded together.”

The Examiner is interpreting the claims broader than that defined in Applicant’s specification. During examination, the Examiner is to give the broadest “reasonable interpretation *consistent with the specification*.” (*Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (Emphasis added); *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) (“PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, *taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in*

*applicant's specification*."). (Emphasis added.)

As previously argued, the “ceramics” of *Rickards* relate to the non-deformable core (col. 10, ll. 1-16). *Rickards* does not indicate that the ceramic (or any other material for the hard non-deformable core) is porous. In fact, the ceramics referenced in col. 10, ll. 12 of *Rickards* are the “comparison materials” in the Examples of Applicants. *Note*, p. 31, ll. 19-20 of Applicants’ specification.

The Examiner’s rejection is based on an overbroad reading of the claimed terminology. When read in light of Applicants’ specification, it is clear that *Rickards* does not disclose the use of a core particulate material which is porous, much less a core particulate material which exhibits the inherent or induced porosity of the porous particulates of the claims of Applicants.

In any event, there is no reason to conclude from *Rickards* that the disclosed agglomerated particles exhibit any inherent or induced permeability. *Rickards* discloses coating of the agglomerate to partially fill the porosity. Porosity of the agglomerated particles does not mean that the agglomerates exhibit inherent or induced permeability which would require the pores to be interconnected.

Further, the “porosity” referenced in *Rickards* (e.g., col. 7, l. 38; col. 8, l. 12; col. 17, l. 27; and col. 18, ll. 34-35) relates to the porosity of the proppant pack. The referenced porosity in the claims of Applicants relates to the porosity of the particulate. The ASG of the proppant pack of *Rickards* would not be less than the ASG of the deformable particulate because the deformable particulate in *Rickards* fills the porous spaces *in between* the hard non-deformable particulates.

The Examiner further states in his Advisory Action that “[A]pparent specific gravity (or apparent density) is a gravity influenced packing density, wherein a material is gravity-fed into a specified volume.” (Paragraph (2) of Advisory Action.) Applicants respectfully disagree with the definition adopted for apparent specific gravity. The Examiner describes bulk density, not apparent specific gravity. Apparent specific gravity is not equivalent to apparent density. Apparent density refers to the weight per unit volume of a material, including voids, and is a measure of the bulk of the material. In other words, apparent density refers to the weight per unit volume whereas apparent specific gravity refers to the specific gravity of a porous solid when the volume used in the calculations is considered to exclude the permeable voids.

**Examiner's Rejection on the Ground of Double Patenting.** The Examiner has rejected Claims 106-110, 112, 114-116, 119, 121-131, 135-140, 142, 144, 145, 150-154 and 160-180 on the

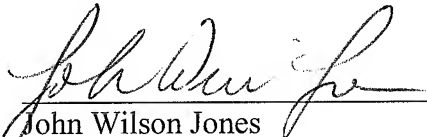
ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 97 of *Rickards*. This ground of rejection is also traversed.

Claim 97 of *Rickards* specifically recites a portion of the deformable particulates in the pack being “a core component of substantially non-deformable material surrounded by at least one layer component of substantially deformable material.” As stated *supra*, the deformable particulates of *Rickards* are not proppant. The proppant in *Rickards* is the substantially non-deformable material. The combination of deformable particulate and substantially non-deformable material would not exhibit the claimed physical properties of Applicants as discussed *supra*.

**Conclusions.** The Examiner is respectfully requested to telephone the undersigned should he deem it useful to expedite the prosecution of this application and issuance of a Notice of Allowance.

Respectfully submitted,

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